

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1163 of 1998

in

SPECIAL CIVIL APPLICATION NO 6653 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN
and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 2 : Yes

3 to 5 : No

YOGI VINUKANT SHANKERLAL

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

MRS KETTY A MEHTA for Appellants
Mr.Prasnat G. Desai, G.P., for the respondents

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

MR.JUSTICE M.H.KADRI

Date of decision: 05/10/98

ORAL JUDGEMENT : (Per: K.G. Balakrishnan, C.J.)

1. The appellants submitted applications for selection to the post of Vidhya Sahayak. The Education Department of Government of Gujarat has formulated a scheme for appointment of primary school teachers. It is called "Vidhya Sahayak Scheme". As per the scheme, the primary teachers are to be appointed on the district-wise basis and a consolidated salary of Rs.2500/- per month would be paid to the teachers. Previously, there was another scheme for appointment of primary teachers as 'balguru', and the recruitment was on the basis of taluka-wise, and several such primary school teachers were appointed. Under the new scheme, the persons who were already selected as balguru have also to be considered for appointment. As per the scheme, the District Primary Education Officer shall select the candidates and the Director of Primary Education has been given authority to lay down conditions for such selection. Advertisement was published for inviting applications and one of the conditions laid down in the advertisement was that the applicant should submit the original certificates of PTC and SSC, which have been prescribed as basic qualification for selection. The appellants wanted to submit applications for more than one district and have submitted the original certificates of PTC and SSC in one district, and, so far as the applications for other districts are concerned, the appellants have submitted xerox copies of certificates of PTC and SSC with the applications. As it was not in accordance with the condition given in the advertisement, their applications were rejected. The rejection of the applications was challenged by the appellants before the single Judge on the ground that it was violative of Articles 14 and 16 of the Constitution of India. According to the appellants, the insistence for production of the original certificates of PTC and SSC is impractical condition and is having no nexus with the merit of a candidate which alone should have been the criterion for selection. The learned single Judge disposed of Special Civil Application No. 6653 of 1998 by order dated 15.9.1998, which reads as under:

"In view of the order passed in SCA Nos. 5218/98, 8610/97 and 8193/97 dated 13.8.1998 by this Court (Coram:N.N. Mathur, J), the petitioner is relegated to the Committee to implement Vidya Sahayak Scheme. In view of this, the petition is disposed of accordingly without

entering into the merits of the case."

The above order of the learned single Judge is challenged before us.

2. We heard Mrs. Ketty A. Mehta, learned counsel appearing for the appellants, and Mr. Prashant G. Desai, learned Government Pleader for the respondents.

3. The first contention urged by the appellants' counsel is that the direction of the learned single Judge to remit this case to the Committee is illegal in the sense that the Committee cannot consider the matter, as the appellants have challenged the rejection of the applications on the ground that it was violative of Article 14 of the Constitution of India. It is contended that the Committee was appointed pursuant to the judgment of the learned single Judge dated 13.8.1998 in Special Civil Application No. 5218 of 1998 and allied matters and the Committee has no authority or power to consider the constitutional questions raised by the appellants. The common judgment and order dated 13.8.1998 in Special Civil Application No. 5218 of 1998 is produced before us, and, on going through the judgment, we find that certain objections raised by the petitioners against Vidhya Sahayak Scheme were directed to be considered by a Committee consisting of some higher officials. We do not think that the question now raised by the appellants is one of the matters covered by the subject involved in that case and hence it is not a matter to be considered by the Committee. Therefore, the direction of the learned single Judge to delegate the questions raised in the Special Civil Application to that Committee was not proper.

4. As the learned single Judge has not considered the matter on merits, we propose to do so.

5. The only question raised by the appellants' counsel is that the appellants were denied opportunity to submit applications in all the districts they wanted to apply. There is no denial as such in submitting application. The only condition laid down is that they should submit the applications with the original certificates of PTC and SSC. It is obvious that the authorities wanted to restrict the applicants that they should apply only in one of the districts. Even though the scheme, as such, is State-wise, the appointments are to be made district-wise. The authorities are perfectly justified in imposing a condition that the candidate

shall apply only in one district. We do not think that it is an unreasonable restriction imposed on the appellants. In the public employment, some time, the candidates may apply in several districts and cause great inconvenience in making selection. As the appellants are not denied opportunity to make applications, we do not think that the condition that the appellants should produce the original certificates of PTC and SSC along with the applications is violative of Articles 14 or 16 of the Constitution of India.

6. The learned counsel for the appellants contended that the insistence of the authorities to produce original certificates cannot be complied with for the reason that the appellants had already submitted their original certificates while making applications in some other district. It is further contended that the said insistence is to restrict the appellants to apply to one of the districts. We do not think that the appellants are as such denied any opportunity. The only thing is that they have to exercise their option to submit their applications in one of the districts, as they are aware that the applications without original certificates will be rejected. We do not think that this condition is irrational or unreasonable.

7. The learned counsel for the appellants relied on the decision of the Supreme Court in the case of J. Pandurangarao vs. The Andhra Pradesh Public Service Commission, Hyderabad, reported in AIR 1963 Supreme Court 268. This is a case where the advocates who were not practising as Advocate in the Andhra Pradesh High Court were denied right to submit applications for selection for the posts of District Munshifs in the State of Andhra Pradesh. The appellant was one who enrolled as an advocate in Karnataka and his application was rejected. It was held by the Supreme Court that such a condition was not reasonable and it contravenes Article 14 of the Constitution of India. The Supreme Court further held as under:

"Article 14 forbids class legislation, it does not forbid reasonable classifications for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Art.14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguished persons or things grouped

together from others left out of the group; and the second is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. The classification on which the statutory provision may be founded may be referable to different considerations. It may be based on geographical considerations or it may have reference to objects or occupations or the like. In every case there must be some nexus between the basis of the classification and the object intended to be achieved by the statute."

In the aforesaid case, there was denial of opportunity to submit application, whereas, in the present case, there is only restriction in making application to one of the districts.

8. The learned counsel for the appellants relied upon the decision of the Supreme Court in the case of Krishan Chander Nayar vs. The Chairman, Central Tractor Organisation and others, reported in AIR 1962 Supreme Court p.602. This is a case where a government employee, who was terminated from service, was denied opportunity for competing in a selection on the ground that there was a ban. It was held that the petitioner had been deprived of his constitutional right guaranteed under Art.16(1) of the Constitution. So long as the ban subsisted, any application made by the petitioner for employment under the State was bound to be treated as waste paper. It was held that such a ban imposed by the Government had no reasonable basis and it has no relation to his suitability for employment or appointment to an office. We do not think that the aforesaid case has any application to the present case, because there was no ban as such in the present case against the appellants nor there is any denial of any opportunity to submit application.

9. The next judgment relied upon by the learned counsel for the appellants is in the case of the State of Mysore vs. S.R. Jayaram, reported in AIR 1968 Supreme Court 346. This is a case in which common examination was held for selection of Class I, Class II and Class III posts and the Public Service Commission selected candidates ranging at Sr. Nos. 1 to 3, 5 to 8, 10 to 14, 16 to 19, 21, 2, 25 and 26 for appointment as Assistant Commissioner, and seven candidates ranking 4, 9, 15, 20, 23, 24 and 27 for appointment as Assistant Controllers. The Supreme Court held that this was violative of Article 14 of the Constitution of India. It was held that Class I post should not have been given to

less meritorious candidates and Class II post to a more meritorious candidate. The principle of recruitment by open competition aims at ensuring equality of opportunity in the matter of employment. The learned counsel for the appellants contended that, in the instant case, less meritorious candidate may get opportunity of getting appointment in a district and the appellants, who have secured higher marks, would not get opportunity on the ground that their applications are rejected on the ground that they have not produced original certificates. It is upto the appellants to choose a district and make applications. When the appointment is on the district-wise, the authorities can insist for production of original certificates. It was further submitted by the learned counsel for the appellants that this guideline is not found in Vidhya Sahayak Scheme and, therefore, the district authorities were not empowered to lay down such guidelines. It is submitted by the learned Government Pleader that the Director of Primary Education has power to lay down the condition and such direction was given by him. All the applicants who have submitted their original certificates have got opportunity to consider their claim on merit vis-a-vis with other candidates. We do not find any violation of Articles 14 or 16 of the Constitution of India.

10. Even though the learned single Judge did not consider these questions, we do not find any merit in the contentions raised by the learned counsel for the appellants.

11. The learned counsel for the appellants submitted that the appellants are entitled to get reservation as they are members of SEBC and some posts are likely to remain vacant in other districts. The learned Government Pleader submitted that the grievance, if any, of the appellants can be considered by the Director of Primary Education. The appellants are at liberty to submit any such complaints before the Director of Primary Education. In the event of filing any such petition, the same shall be considered and appropriate orders be passed. The dismissal of this Letters Patent Appeal and Special Civil Application would not stand in the way of extending any benefits to these appellants if they are otherwise entitled to.

12. The Letters Patent Appeal is disposed of accordingly. There shall be no order as to costs.

(swamy)

